IN THE HIGH COURT OF JUDICATURE AT BOMBAY'

O.O.C.J.

SUIT NO. 571 OF 1975

Saurashtra Chemicals Ltd ...Plfff

vs.

Indian Oil Corporation Ltd ...Defnd

Kevil Sethalwal i/by. Mulla and Mulla

for the plaintiffs.

Shailesh Shah i/by. Malvi Ranchoddas & Co.

for the defendants.

CORAM: S.U. KAMDAR, J.

DATED: 2ND MAY, 2006.

JUDGMENT :

1. The present suit is filed for a declaration that the agreement dated 8.5.1967 read

with letter dated 3.10.1967 has been validly renewed for the period 1.9.1972 to 31.8.19777 on the same terms and conditions including the condition of rebate and the credit period. By prayer clause (b) the defendants are seeking specific performance of the said renewed agreement. Alternative to prayer (a) and (b) the plaintiff has claimed damages for a sum of Rs.5,61,487.66/-. Alternatively to the aforesaid claim for damages the plaintiffs have claimed compensation of a sum of Rs.24,84,297.19/- as set out in Exhibit J to the plaint. This claim for damages is based on a non-granting of a rebate of Rs.5/- inrespect of supplies effected subsequent to the expiry of the agreement dated 8.2.1967. The claim for compensation is in respect of the loss suffered for withdrawal of 30 days credit facility to the petitioner. Simultaneously the claim is also made for loss of interest by virtue of making payment in cash and without giving credit facility. The plaintiffs have also claimed further interest at the rate of 15% p.a. Some of the material facts of the present case are as

under :

2. The plaintiffs are a company carrying on activities of manufacturing chemicals in the name and style of Saurashtra Chemicals at Porbunder. The defendants are a government of India Undertaking and is carrying on business of supply and distribution of petroleum products including furnace oil.

3. It is the case of the plaintiffs that prior to November 1965 the plaintiffs were getting their requirement of furnace oil from one "Burmah Shell". After 1965 the plaintiffs started purchasing the furnace oil from the defendants. According to the plaintiffs there were protracted negotiations and discussions between the parties and ultimately a draft agreement was proposed by the defendants. There were further meetings and discussions after 8.2.1967 and in the meeting held on 4.9.1967 the representative of both the parties agreed that the plaintiffs will switch over the entire requirement of purchase of furnace oil from

the Burmah Shell to the defendants on the condition that the defendants will give Rs.6/- per metric tonne rebate on entire quantity of purchase of furnace oil. It was also agreed that out of the said rebate of Rs.6/-, the plaintiff will be entitled to rebate of Rs.5/- per metric tonne and Rs.1/- will be paid to M/s. Roberts Macleans and Co.Ltd who were the distributing agents. It was thus agreed that the final agreement would come into force on 1/9/1967. It is the case of the plaintiffs that subsequently on 3.10.1967 the defendants forwarded to the plaintiffs four copies of the final agreement pertaining to the supply of furnace oil dated 8.9.1967 and requested the plaintiffs to return the said four copies duly signed at Bombay. The letter dated 3.10.1967 provided for giving a rebate of Rs.6/- on the said supply of 125.5 metric tons. Ultimately an agreement was executed being dated 8.2.1967. The period of agreement was for five years with effect from 1.9.1967. Further there was a clause for renewal of the said agreement. The said clause for renewal reads as under :

> " PERIOD: This agreement shall be for a period of 5 years from 1st of September 1967. This agreement can be renewed for such further period or periods as may be required on the same terms and conditions, provided the notice for renewal is given at least 2 months before the expiry of the contract."

4. Pursuant to the said agreement executed there is no dispute that the plaintiffs were supplying necessary furnace oil in terms of the agreement which included providing for a credit period of 30 days as well as rebate of Rs.6/- per metric tonne, Rs/5/- paid to the plaintiffs and Rs.1/- to the distributing agent. It is the case of the plaintiffs that in terms of Clause 1 of the said agreement the plaintiffs were entitled to renewal of the said agreement for a further period of 5 years at their sole discreation. Accordingly by a notice dated 5.6.1972 the plaintiffs informed the defendants that since agreement was about to expire on 31.8.1972 they were exercising their right of renewal of the said agreement. The plaintiffs thus state that they are entitled to

specific performance of the said agreement for a further period of five years on the same terms and conditions. It is the case of the plaintiffs that the plaintiffs have thus exercised their right of option to renew the said contract for a further period of 5 years on the same terms and conditions. It is the case of the plaintiffs that by virtue of giving notice of renewal a new agreement has come into existence from 1/9/1972 to 31.8.1977.

5. The defendants however by their letter dated 19.6.1972 denied their intention to renew the said agreement. The defendants made it clear that the defendants will not effect supply of furnace oil to the plaintiffs in accordance with the terms and conditions of the said agreement dated 8.2.1967 subsequent to the period 1.9.1972 when the said agreement was expiring. The plaintiffs thereafter addressed a letter dated 11.7.1972 expressing surprise that the defendants were not willing to renew the said agreement though the agreement specifically provides for the

same. After some correspondence a meeting took place between the plaintiffs and the defendants in Bombay and it was decided that the legal opinion would be obtained. The plaintiffs' advocate obtained the legal opinion and forwarded to the defendants and sought a renewal of the agreement. However the defendants refused to renew the said agreement and expressed their inability to do so. The defendants made it clear that after the expiry of the period of 31.8.1972 and with effect from 1.9.1972 the defendants would not supply any material in accordance with the terms and conditions of the agreement which was to expire on 31.8.1972. The defendants also refused to continue to give rebate or any credit period to the plaintiffs herein. It is the case of the plaintiffs that on 3.6.1977 the plaintiffs gave another notice to the defendants for renewal of the agreement for further period of 5 years i.e. commencing from 1.9.1977 and ending on 31.8.1982. This notice has been given on the basis that after first renewal the plaintiffs were also entitled to the second renewal of five years. It is not in

dispute that even after the expiry of the period of the agreement i.e on 31.8.1972 the defendants have supplied the material to the plaintiffs and the plaintiffs have purchased the said material though the same has not been done on the same terms and conditions as provided in the earlier agreement dated 8.2.1967. The supplies for the subsequent period has been effected without giving any rebate and without giving any credit period and on the basis of cash payment against the delivery.

6. It is in these circumstances the plaintiffs after giving notice to the defendants have filed the present suit for specific performance of the said agreement for renewal of five years and also filed the suit for damages for committing breach of the said renewed agreement. The plaintiffs have also sought the relief of compensation in lieu of specific performance of the said agreement. The said suit has been defended by the defendants by filing the written statement. The defendants have in their written

statement inter-alia contended that there was no question of renewal of the agreement as Clause 1 of the contract only envisages that by mutual consent of the parties a renewed agreement can be entered into. It is the case of the defendants that the agreement was only for a period of five years and thus the defendants are not liable to effect supplies of the goods for any further period after 1.9.1977 on the terms and conditions of an agreement which stood expired on 31.8.1972. It has been further contended that if the contention of the plaintiffs is accepted then the said renewal clause would bind the defendants to supply the goods in perpetuity at the price which was fixed as on 8.2.1967. It is thus submitted that the same cannot be the intention of the parties in arriving at the said agreement. It was further submitted that no officer of the defendant had either express or implied authority to bind the defendant corporation to effect supply of the furnace oil to the plaintiffs on the terms and conditions as arrived at in the agreement dated 8.2.1967 for a indefinite period of time. It is

thus submitted that what Clause 1 to the agreement provides is mere intention of the parties that if both the parties mutually agree to continue the contract for a further period to be decided by the parties then the said contract can be renewed on such terms and conditions as may be agreed upon between the parties. It was thus submitted that there is no such provision in the agreement for binding the agreement for a further period of five years. In any event it has been further submitted that the said Clause 1 does not give any option to the defendant alone for a renewal of the said contract. It does not provide that merely on service of the notice of renewal the plaintiffs will be entitled to a fresh contract for the next period of 5 years. It has been further submitted that the Clause 1 only provides for a possibility of renewal and it does not give any vested right to the plaintiffs to renew the said contract at their unilateral option. The plaintiffs also denied any claim for damages or a claim that the plaintiffs were bound and liable to supply the material for a further period of 5 years the very

same goods on the very same terms and conditions. The defendants have also disputed the computation of the claim for damages as well as the computation of quantity supplied by the defendants to the plaintiffs for a subsequent period of time. On the aforesaid pleadings issues were framed by the learned judge on 28.7.2003 which reads as under :

> 1. Do the plaintiffs prove that they are entitled for declaration that the agreement dated 8.2.1967 read with letter dated 3.10.1967 was validly renewed on the same terms and conditions including condition giving rebate of Rs.5/- per metric tonne and 30 days credit to the plaintiffs ?
>
> 2. Whether the plaintiffs prove that the defendants were bound to supply furnace oil to the plaintiffs as per the agreement and they have failed to make necessary supply ?
>
> 3. Is the plaintiffs entitled for specific performance ?
>
> 4. Is the plaintiffs entitled for damages for breach of contract to the extent of Rs.5,61,487.60/- or in the alternative to which the plaintiffs are entitled for damages to Rs.24,84,297/- paise from the defendants and interest etc ?
>
> 5. Do the defendants prove that any term or provisions in the agreement dated 8.2.1967 which was not expressly

mentioned in the minutes of the meeting held on 4.9.1967 was not intended to form part of the said agreement ?

6. Do the defendants prove that the clause regarding renewal is vague, uncertain and incapable of performance and is therefore void ?

7. What order and decree ?

7. At the outset it is necessary to mention that the learned counsel appearing for the plaintiffs submitted that the plaintiffs are not pressing for the relief of specific performance simply because the period for which the renewed contract supposed to have been entered into i.e. from 1.9.1972 to 31.8.1977 has already expired. He further also brought to my attention that there is a second suit filed being Suit no. 1172 of 1980 for the further renewal of the said agreement for five years after first renewal i.e. from 1.9.1977 to 31.8.1982. However he submitted that in the light of the fact that the aforesaid periods have already expired he is not seeking the relief in terms of prayer clause (b) which inter-alia provides for specific performance. He

also submits that he also gives up the claim for specific performance since specific performance cannot be granted to the plaintiffs of agreement for supply of movable goods. However he submits that he is pressing the claim for damages for breach of the renewed contract which according to him is already being arrived at by merely giving a notice of renewal and thus the claim for damages is made on the basis of such a contract.

8. In view of the fact that the learned counsel for the plaintiffs is not pressing the claim for specific performance the answer to the Issue No. 3 must be negative and accordingly the Issue no.3 is answered in negative. In so far as the claim for damages is concerned learned counsel for the plaintiffs has pressed the same. He has contended that the plaintiffs are entitled to the said claim. In support of his contention he has taken me through the agreement which is at Exhibit D in the evidence. He has drawn my attention to Clause 1, Clause 2, Clause 6 and Clause 7 as amended. The said clauses read as under :

1. PERIOD : This agreement shall be for a period of 5 years from 1st September 1997. This agreement can be renewed for such further period or periods as may be required on the same terms and conditions, provided the notice for renewal is given at least two months before the expiry of the contract.

2. QUANTITY : Subject to and in accordance with the provisions hereinafter contained the Sellers agree to sell and deliver the main Installation/Refineries/Depots and the Buyers agree to purchase, from the Sellers and no other source, their entire requirements at their works at Porbander amounting approximately to 44,000 tonnes of Furnance Oil during the period of this agreement. The sellers shall be required to supply this quantity at the rates of approximately 3700 tonnes per month. For any requirement which is in excess of the aforesaid monthly quantity of 3700 tonnes the Buyers shall give the Sellers a minimum notice of 30 days in advance of such requirement but if the Buyers require less than the aforesaid quantity of 3700 tonnes in any month or months they shall give the sellers prior notice of at least 15 days. This reduction will, however, not exceed 20%. The limit of reduction herein mentioned however is inoperative where Force Majeure Clause provided hereinafter becomes operative.

6. PRICE : The price for furnace oil to be supplied, shall be the Sellers’s day to day F.O.R./Ex Supply point price (Bulk). The Railway Freight siding charges and other charges if any, leviable by the Port Trust/ Railways will be on the account of the Buyers. Also, sales tax

and local taxes such as Municipal, Octroi etc., will be charged extra to the Buyers at the rates applicable from time to time. The sellers however, reserve the right to revise the aforesaid rate structure and the rates without notice.

7. PAYMENT : We are pleased to extend credit facility and accordingly our bills must be settled within 30 days from the date of despatch of the goods.

9. It has been contended that the agreement dated 8.2.1967 provides for purchase of the furnace oil on the aforesaid terms and conditions. It has been contended that in so far as the rebate of Rs.5/- is concerned he has drawn my attention to the minutes of the meeting which is at Exhibit B at page 36 and the letter dated 3.10.1967 which indicates that inrespect of the agreement dated 8.2.1967 it was agreed that the plaintiffs will be entitled to Rs.6/- rebate out of which Rs.1/- to be paid to the agent and Rs.5/- to be given to the plaintiffs. It is also brought to my attention that the defendants had agreed to give 30 days credit and that is incorporated by way of amendment in Clause 7 of the agreement. He has

thereafter submitted that in Clause 1 of the said agreement there is an absolute right vested in the plaintiffs for a renewal of the agreement for a further period of 5 years if the plaintiffs gives the renewal notice two months before the expiry of the said contract. He has submitted that in pursuance of Clause 1 of the said agreement a necessary notice was given on 5.6.1972 which is produced at Exhibit E in evidence. He has further submitted that a reply dated 19.6.1972 to the said notice was filed by the defendants which is at Exhibit F in evidence. He has further submitted that refusing to renew the said contract by the said letter was illegal and without any merits and contrary to the said Clause 1 thereof. It has been further submitted that the subsequent correspondence was also exchanged between the parties where the plaintiffs have insisted for granting of renewal for a further period of five years. Learned counsel for the plaintiffs while interpreting Clause 1 of the said agreement states that clause 1 of the agreement gives an absolute right in favour of the plaintiffs to renew the

agreement for a further period of five years and the defendants have no right to refuse the said renewal. He has also brought to my attention Exhibit A being the draft agreement which has been produced in evidence. He has drawn my attention to Clause 1 of the draft agreement being Exhibit A which reads as under :

> 1. PERIOD : This agreement shall be for a period of .....from the date of commencement of supplies. This agreement can be renewed for such further period or periods as may be required by the parties on the same terms and conditions, provided the notice for renewal is given atleast two months before the expiry of the contract and provided further the sellers are ready and willing for such renewal.

10. He has submitted that Clause 1 of the draft agreement if read in jeuxtapostion with the final agreement arrived at between the parties indicates that the words " and provided further the sellers are ready and willing for such renewal" have been deliberately deleted which

indicates that under the draft agreement it was suggested by the defendants that they have a right of refusal to renew the said contract and because of the deletion of the aforesaid words that right has been expressly given up by the defendants while entering into final agreement between the parties. It is thus submitted that once it is so, it is only the plaintiffs who have an absolute right of exercising the option of renewal of the contract and once the said right is exercised the defendants are bound to accept the same in toto. It has been submitted that the defendants are not entitled to refuse the renewal of the contract and thus by giving notice of renewal by the plaintiffs the said new contract or the said new/renewed contract for a further period of five years i.e. 1.9.1972 to 31.8.1977 has been arrived at on the very same terms and conditions as mentioned in the said agreement dated 8.9.1967. He has submitted that once it is so than the plaintiffs were entitled to the supply of furnace oil for a further period of five years on the same terms and conditions as mentioned in the said agreement

dated 8.2.1967 which will include two conditions namely of giving rebate of Rs.6/- i.e. Rs.5/- to the plaintiff and Rs.1/- to the distributing agents and giving the 30 days credit period for making payment to the said supplies. It has been further submitted that however the defendants wrongfully contended that the plaintiffs are not entitled to renewal of the contract on the same terms and conditions and has refused to supply the goods accordingly. as of the contract dated 8.2.1967. It has been submitted that the defendants have been supplied the goods for a subsequent period of five years but the defendants have denied the benefits of the said terms and conditions of the agreement dated 8.2.1967 to the plaintiffs. It has been submitted that the defendants have refused to give credit period of 30 days and also not granted the rebate which was agreed upon in the said agreement dated 8.2.1967. It has been thus submitted that the plaintiffs are entitled to claim the said amount of rebate as well as the claim for interest of not giving credit for a period of 30 days and thus the

plaintiffs will be entitled to recovery of the said amount as and by way of damages.

11. In so far as the quantum of damages is concerned learned counsel for the plaintiffs has taken me through the evidence of one Mr. Sharma, P.W. no.2 and he has drawn my attention to para 3 and 4 of the said evidence to show that the plaintiff has proved the total quantity of the goods supplied to them by the defendant during the period of 1972 to 1977 that is a period which is claimed on the basis of renewed contract. He submitted that though they have not been able to prove the entire quantity as mentioned in the plaint but submitted that in any event they are entitled to the claim of damages for the amount of quantity proved in the evidence led by them. He has submitted that even in cross examination it has been an admitted position that the defendants have supplied the material even for a subsequent period of 5 years and therefore they are entitled to the said benefit. In view thereof learned counsel for the plaintiffs has sought a decree in

terms of prayer clause (d) and (e). He has submitted that though the rate of interest is claimed at 15% p.a. it is not the agreed rate of interest but they have claimed the rate of interest as current rate of interest prevailing in the market at the relevant time.

12. Learned counsel for the plaintiffs has submitted that the renewal clause gives an absolute right in the plaintiffs to renew the contract for a further period of five years. Learned counsel for the plaintiffs has in support of the aforesaid contention relied upon the judgment of the apex court in the case of **State of U.P. and Ors vs. Halji Tandon (Dead) through Lrs. reported in (2004) 1 SCC 1,** particularly para 13 of the judgment which reads as under :

> "13. In India, a lease may be in perpetuity. Neither the transfer of Property Act nor the general law abhors a lease in perpetuity. Where a covenant for renewal exists, its exercise is, of course a unilateral act of the lessee and the

> consent of the lessor in unnecessary. Where the principal lease executed between the parties containing a covenant for renewal, is renewed in accordance with the said covenant , whether the renewed lease shall also contain similar clause for renewal depends on the facts and circumstances of each case, regard being had to the intention of the parties as displayed in the original covenant for renewal and in the surrounding circumstances. There is a difference between an extension of lease in accordance with the convenant in that regard contained in the principal lease and renewal of lease, again in accordance with the convenant for renewal contained in the original lease. In the case of extension it is not necessary to have a fresh deed of lease executed, as the extension of lease for the term agreed upon shall be a necessary consequence of the clause for extension. However, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and, if exercised, a fresh deed of lease shall have to be executed between the parties. Failing the execution of a fresh deed of lease, another lease for a fixed term shall not come into existence though the principal lease inspite of the expiry of the term thereof may continue by holding over for year by year on month by month, as the case may be. "

13. He has also thereafter relied upon the judgment of the Andhra Pradesh High court in the case of **Syed Jaleel Zane vs. P. Venkata Murlidhar and Ors. reported in AIR 1981 Andhra Pradesh 328** which held that there can be a

perpetuity clause in any particular agreement. The learned counsel for the plaintiffs has submitted that though both the aforesaid judgments dealt with the lease of any immovable property in his submission they are still applicable to the cases where it pertains to the supply of movables and goods under a contract sale of goods.

14. On the other hand learned counsel for the defendants has submitted firstly that there is no such absolute right conferred on the plaintiffs under Clause 1 of the said agreement empowering them to exercise a right of option for renewal of the contract. Learned counsel for the defendants has submitted that the clause as it reads indicates that the renewal notice can be given by both the parties i.e. the plaintiffs and the defendants and there is no absolute right of option vested in the plaintiffs alone. He has further submitted that a plain reading of the clause indicates that after giving of the renewal notice by either party, the parties can enter into a renewed agreement for such period as may be

agreed upon by the parties. Learned counsel for the defendants has thus contended that infact what Clause 1 of the agreement contemplates by giving notice is merely an expression of intention to renew the said agreement. It is because if such a notice is given than within a period of two months before the expiry of the contract a fresh agreement can be arrived at between the parties on mutually acceptable terms and conditions. It is submitted by the learned counsel for the defendants that the same was inserted merely for the reason that the plaintiffs can have uninterrupted supply. However it has been submitted that Clause 1 of the agreement does not confer any vested right in the plaintiffs to obtain the renewal of the agreement for a further period of 5 years on the same terms and conditions as mentioned in the agreement dated 8.2.1967. It has been further submitted that Clause 1 of the agreement merely expresses the intention of both the parties to renew the agreement and does not at all amount to creating a right in favour of the plaintiffs for next five years to obtain supply on

the same terms and conditions. It has been further submitted that if the contention of the learned counsel for the plaintiffs is accepted then in that event the said Clause 1 would lead to an agreement in perpetuity in as much as the defendants will be bound to supply the said material to the plaintiffs on the same terms and conditions in perpetuity because the said Clause 1 would stand included under every renewed contract giving a power to the plaintiffs to renew the said contract for a further period of five years on expiry of every period of five years. It has been submitted that there cannot be any contract in perpetuity to supply the material to the plaintiffs at the price fixed as on 8.2.1967 and thus the contention of the plaintiff that it confers an absolute right to the plaintiffs for renewal of the agreement is liable to be rejected. It has been further submitted that infact the clause does not even prescribe for renewal of the agreement for a further period of 5 years. It specifically states that "for a period or periods" as may be required indicates that the period for

renewal has to be determined by mutual agreement between the parties while entering into a fresh agreement. Thus the learned counsel for the defendants has submitted that the contention raised by the plaintiffs that the plaintiffs have absolute right of renewal for a further period of 5 years is without any merits and this court should reject the same. Alternatively it has been submitted that in any event, Clause 1 of the agreement is vague, ambiguous and uncertain and thus hit by Section 29 of the Contract Act and therefore it is liable to be declared as void.

15. Learned counsel for the defendants have further submitted that the reliance placed by the plaintiffs on draft agreement is in fact misconceived and deliberately done to mislead this court. Learned counsel for the defendants has further submitted that the said draft agreement produced at Exhibit A in the evidence is infact with a view to mislead the court because that is not the draft agreement of the final agreement which has been enforced into between the parties

on 8.2.1967. It has been submitted by the learned counsel for the defendants that infact the said draft is draft agreement for a subsequent period and for which no final agreement has been arrived at. Insupport of the aforesaid contention it has been submitted that the agreement which has been produced in the form of draft agreement on page 1 of Exhibit A indicates the address of the defendants and while giving the address of the defendants the pincode of Bombay is given as 400 025. He has submitted that in 1967 the city of Bombay did not have six digit pincode number at all and there was only two digit pincode. He has further submitted that he has established the aforesaid fact in cross examination of the plaintiffs witness wherein it has been brought to the notice of the plaintiff’s witness that till 1972 there was only two digit pincode. Learned counsel for the defendants has insupport of the aforesaid submission has drawn my attention to the cross examination of the witness P.W.no.1. He has further submitted that in the cross examination on the aforesaid aspect the evidence laid is as under

:

Q.53. (Shown Exhibit C at page 10 of the compilation of documents). Would it be correct to say that in the year 1967 the pin code of Mumbai had two digits ?

Ans. I am unable to reply.

Q.54 (Shown Exhibit G at page 19 of the compilation of documents). Would it be correct to say that in the year 1972 the pin code had two digits ?

Ans: I don’t know.

Q.55 (Shown Exhibit S at page 50 of the compilation of documents) Do I take it that your answer to even this letter containing two digits would be the same as your previous two answers ?

Ans. Yes.

Q.56 (Shown Exhibit- Z at page 59 of the compilation of documents). Would it be correct to say that by 1975 six digits had been introduced in the pin code ?

Ans. Yes.

Q.57. (Shown Exhibit A at page 1 of the compilation of documents). Can you tell us if this agreement was handed over to you in the year 1967 then why did it contain six digit pin code i.e. 400 025 ?

Ans. I don’t know. I can’t say. At that point of time there may have been

six digits pin codes.

16. The learned counsel for the defendants has further submitted that apart from the aforesaid evidence a further evidence of Mr. Shambulal V. Agarwal being the P.W.No.1 has explained the circumstances and the method in which the said final agreement dated 8.2.1967 was arrived at. He submitted that the said evidence indicates that the said draft produced is not the draft of a final agreement dated 8.2.1967. It has been submitted that in para 7 to 10 of his examination in chief the plaintiff has specifically deposed that after the draft agreement was prepared the differences and disputes between the parties were thrashed out in a meeting held on 4.9.1967 and specific averments are made about what transpired in the said meeting which was arranged to sort out the differences between the parties. He has thereafter submitted that the defendant's witness himself has deposed that the said differences were sorted out and the same were incorporated and

ultimately forwarded the final agreement dated 8.2.1967 on 3.9.1967. Thus it is obvious that the draft agreement except the terms in which there were differences must be identical to the final agreement. However, the perusal of the draft and final agreement indicates that other clauses inrespect of which there was no dispute at all are also not identical but there is vast difference among those clauses as well. It has been submitted by the learned counsel for the defendants that thus the plaintiffs have produced false documents with a view to mislead this court so as to rely upon the last two lines of Clause 1 of the purported draft agreement in the evidence. It is the case of the defendants that infact the draft which has been produced as purported draft agreement of the final agreement dated 8.2.1967 was the draft agreement forwarded by the defendants to the plaintiffs sometime in or about 1975-76 when negotiations were on for the further arrangement. It has been submitted that the plaintiffs have infact given a false evidence in the present proceedings and therefore the reliance

placed on the draft agreement is without any merits.

17. Thus the learned counsel for the defendants has submitted that the reliance placed on the deletion of the two lines of the draft agreement cannot be related to the said final agreement dated 8.2.1967. Learned counsel for the defendant has thereafter submitted that there is no contract between the parties of giving a rebate of Rs.5/- even in a meeting dated 4.9.1967 and the same is not even incorporated in the final agreement and thus there can be no renewal of the contract including the clause of rebate for the subsequent agreement. It has been further submitted that the defendant being a public sector enterprise is not entitled to give preference to any one of their consumers because it would be absolutely arbitrary and discriminatory. Learned counsel has thereafter submitted that in any event no person on behalf of the defendants had any authority to enter into such a contract which is both in substence and form a contract in

perpetuity and therefore also even if such a clause is to be treated as binding still the same cannot be given effect to because the person who is executing such an agreement had no such authority to bind the defendants in perpetuity to supply the material to the plaintiffs at the rate fixed on 8.2.1967.

18. Alternatively the learned counsel for the defendants has submitted that if this court is of the view that infact there is such a clause of renewal and the defendants are bound to renew the contract then in that event it is submitted that the plaintiffs have failed to establish the claim for damages. Firstly it has been submitted that the rate of interest is admittedly not the agreed rate of interest and in so far as current rate of interest is concerned the plaintiffs have not led any evidence to establish what was the current rate of interest at the relevant time in the market. It has been submitted that in absence of such evidence it is not open for the court to grant claim for damages on the basis of assumed

rate of interest. It has been further submitted that even in respect of the quantity supplied by the defendants the quantity mentioned in the plaint is different then the quantity sought to be proved by the plaintiffs in evidence. It has been further submitted that for the purpose of establishing the quantity supplied the defendants have failed to produce sufficient evidence because the only document which has been produced is the ledger extract in the balance sheet. It has been submitted that no primary evidence of the nature of stock register or invoices establishing the supply of various quantity of goods has been produced. It has been submitted that the books of accounts in the nature of balance sheet and in the nature of ledger extract is only corroborative evidence under Section 34 of the Evidence Act and cannot be treated as primary evidence to accept the quantity of goods supplied by the defendants as claimed by the plaintiffs. Learned counsel has thereafter submitted that the plaintiffs have claimed interest as and by way of damages because of not giving the credit of 30 days. It has been

submitted that in the suit the plaintiffs have also claimed interest on the said amount. Thus in effect what the plaintiffs have claimed is the interest on interest as and by way of damages. The defendants have submitted that no such relief of interest on interest can be granted as and by way of damages to the plaintiffs herein and therefore also the claim of the plaintiffs is required to be rejected.

19. Learned counsel for the defendants has further submitted that the plaintiffs have claimed an oral assurance on the basis of oral agreement in the meeting dated 4.9.1967 and subsequently with an assurance that the defendants will renew the contract for a further period of 5 years. Learned counsel for the defendants has submitted that no such oral agreement is even pleaded in the plaint. He has brought to my attention para 7 to 10 of the plaint and has submitted that the pleading dose not indicate any plea of oral evidence and thus the plaintiffs are not entitled

to base their claim on the basis of such oral evidence. The learned counsel for the defendants has in support of the aforesaid contention relied upon the judgment of the apex court in the case of **Ram Sarup Gupta (dead) by L.Rs vs. Bishun Narain Inter College and Ors reported in AIR 1987 S.C. 1242** and particularly para 6 thereof in which the apex court has inter-alia held that it is a settled principle of law that in the absence of pleadings, evidence if any produced by the parties, has to be discarded and cannot be entertained.

20. The learned counsel for the defendants has in support of his contention that under Section 29 of the Contract Act if any clause is uncertain or ambiguious then in that event such a contract or clause is void and unenforceable in law. In support of his aforesaid contention he has relied upon the judgment of **Tirumala chetty Rangayya Chetty vs. Kandalla Srinivasa Raghavacharlu and Ors reproted in AIR 1929 Madras 243** particularly

the following portion :

> **"Contract Act, S.29- Agreement to sell at favourable or concession rate is void for uncertainty.**
>
> An agreement to sell at a moderate price or at a fair rate or at a proper rate may be perfectly valid but an agreement to sell at a favourable or concessional rate is indefinite and must be regarded as void for uncertainty.

21. Considering the rival submissions between the parties in my opinion the issue which is essentially required to be determined is inrespect of interpretation of Clause 1 of the said agreement dated 8.2.1967 which has been reproduced herein above.

22. Considering the said clause 1 of the agreement I am of the opinion that what is prescribed under Clause 1 is an eventuality that there can be a renewal of an agreement on same terms and conditions for a further period to be determined by the parties. However it is provided that if either of the parties is desirous in seeking renewal of the agreement then they can be

given two months notice before the expiry of the said contract. The plain reading of the Clause 1 in my opinion does not give any absolute right or option in favour of the plaintiffs that on giving notice of renewal the agreement stands renewed without giving concurrence of the defendants herein. The word "can be renewed" indicates a renewal as a separate act independent to the clause itself. Further the words "further period or periods" as may be required supposes a mutual agreement between the parties inrespect of a period for which renewal has to be effected. The word "as may be required" also supposes that there has been an agreement between the parties for which both the parties agreed for renewal of the agreement. The contention of the learned counsel for the plaintiffs that the agreement by itself stipulates that the agreement stands renewed on notice of renewal given by the plaintiffs and that the plaintiffs have an absolute right vested in him for renewal of the agreement irrespective of the concurrence or consent of the defendant in my opinion cannot be read with the language as

provided for under Clause 1 of the said agreement by the parties. I am also not impressed with the contention advanced by the learned counsel for the plaintiffs that renewal is for a further period of 5 years. The contention that the words "further period or periods" must be read for the next period of five years cannot be accepted in the light of the clear language used in Clause 1 of the agreement indicating that the parties will agree in future at the time of fresh renewal and what would be the period of renewal of the agreement. Thus I am not inclined to accept the contention that Clause 1 as it is read indicates that there is a absolute power vested in the plaintiffs to renew the agreement and the defendants are bound by such renewal. The contention of the learned counsel for the plaintiffs that the renewal for further period means an indefinite period is also not possible to be accept. It is an absurd proposition that there was an agreement for supply of furnace oil the plaintiff to the defendant in perpetuity at the price prevailing as on 8.2.1967. The intention of

the parties in incorporating Clause 1 of the agreement was merely giving two months notice to either of the parties so that the other party can arrive at the opinion as to whether there are chances of further supply of furnace oil on the same terms and conditions or the parties are not willing to continue the supply then the plaintiffs can be in a position to make alternate arrangements for obtaining supply of the said goods. The learned counsels contention that by virtue of the deletion of the portion from the draft agreement which is reproduced herein above the right of the defendant to refuse the contract has been taken away and therefore the final agreement provides for an absolute right in the plaintiffs to renew the contract, in my opinion cannot be accepted. On comparison of the draft agreement with the final agreement which is at Exhibit A and D, I am of the view that the draft agreement produced is not the draft of the final agreement. It is because the clauses are totally different. Even if the oral evidence of P.W. No.1 Mr. Agarwal is accepted as it is in toto

then also it only indicates that the draft agreement produced is not the draft agreement of 8.2.1967. The witness has deposed that after the draft agreement the meeting took place on 4.9.1967 and in the said meeting the differences are sorted out which according to him are mentioned in the evidence in para 8A to 8F which are at page 5 and 6 of the evidence. It is further deposed that after the said meeting the said corrections are incorporated and a final agreement has been forwarded on 3.2.1967 as mentioned in para 10. Thus the evidence of the witness indicates that a difference between the draft agreement and the final agreement was only in respect of the items mentioned in para 8A to 8 F. However looking at the draft agreement with the final agreement I find that even various other clauses are totally different than those ultimately found in the final agreement. This strengthens the contention of the defendants that the draft agreement purpotedly produced is the draft of the final agreement dated 8.2.1967. In my opinion the evidence of P.W.no.1 in paras 7 to 10 is totally false and deliberately

made with a view to take advantage of the last two lines of Clause 1 of the said agreement.

23. Learned counsel for the plaintiffs has fairly conceeded that the pincode numbers of six digit in Bombay has been introduced for the first time on 31.8.1972 and therefore he conceeded that the said draft document may be of a subsequent period and not of 8.2.1967. However the most clinching evidence that the draft agreement is not the final agreement is to be found on a closer observation of the said purported draft agreement produced at Exhibit A. I have perused the original of the said draft agreement. The said original of the draft agreement contains a special adhesive stamp affixed on the top right-hand side of the said document. The said adhesive stamp is sealed by the date put by the stamp office. On examining with the microscopic glass the date is clearly visible as 31.12.1976. In my view that is a clinching evidence to show that the evidence of deponent P.W.no.1 is totally false and the

agreement which is purpotedly forwarded by the defendants to the plaintiffs in December 1976 is sought to be utilised as a draft agreement of 8.2.1967. There is no dispute that even after the expiry of the first period of five years i.e. 1965 to 1972 the supplies were continued for a period 1972 to 1977 and the said five year period which the plaintiffs were claiming to be renewed was about to expire as on 1.9.1977 and it is for the next five years that this agreement Exhibit A was forwarded sometime in or about 31.12.1976 and not 8.2.1967. However the learned counsel for the plaintiffs has used this agreement which cannot be accepted as a draft agreement of 8.2.1967. On 8.2.1967 the special adhesive s stamp office could not have put the date as ‘31.12.1976’ and thus in my opinion the evidence of P.W. no.1 is false and therefore his evidence to the above effect must be totally discarded. Alternatively even on the assumption that the said draft agreement is of 8.2.1967 still in my opinion it does not turn the case on the plaintiffs side either. The said draft agreement had the words ‘provided further

that the sellers are ready and willing for such renewal' in my opinion deletion of these words does not mean that correspondingly a vested right is created in the plaintiffs of unilateral renewal of the said contract and/or the said right of renewal being exercised by the plaintiffs the defendants were bound to comply with the same. The aforesaid contention has no basis whatsoever. Even after deletion of the words what has been provided in the final clause 1 of the agreement does not change the nature of the said clause whatsoever. The Clause 1 does not provide for any unilateral option to be exercised by the plaintiffs. In my opinion the clause does not provide for any option whatsoever. The clause merely provides for issuing a notice for renewal and expression of an intention for further renewal of the contract and thus notice can be issued by both the parties. In that light of the matter in my opinion even if the draft agreement is taken into consideration which for the reasons stated herein above ought not to be still the claim of the plaintiffs that they have a vested right of

renewal of the said contract and on such right being exercised the said contract stood renewed cannot be accepted. In my opinion the clause as worded does not provide for any vested right of renewal. It only provides a future renewal of the contract provided both the parties agree to the same.

24. Turning to the two judgments cited by the learned counsel for the plaintiffs i.e. the judgment of the apex court in the case of State of U.P. (supra) and the judgment of the Allahabad High court in the case of Ram Sarup Gupta (supra) I am of the view that firstly these judgments have no application whatsoever to the facts of the present case because the judgment dealt with a condition of option of renewal of lease in an immovable property. Secondly the clause provided an option to the lessee for a renewal of the contract and on wordings of the sub-clause in that judgment the user was bound to renew the contract. In the present case there is no such option

provided for the plaintiffs nor are there any wordings which indicate that on renewal being exercised by the plaintiffs the defendants are bound to renew the contract. Apart from the aforesaid I am also of the further opinion that the authorities are in respect of the renewal of lease which is essentially of an immovable property and those judgments cannot be straight away applied to the cases which are in respect of goods sold and delivered. It is well settled that the principle of sale of goods of movables and transfer of an immovable properties are totally distinct and different and cannot be compared keeping in mind the different nature of the transactions. I am of the view that there can not be a renewal of a contract for supply of the goods in perpetuity at the price fixed as far back as 1967. In my opinion the aforesaid contention cannot be accepted merely for the reason that it is a settled law that in so far as the price of the goods is concerned they fluctuate from time to time and therefore it is impossible to comprehend the further price at the time of executing the

contract for supply of material for an indefinate period in perpetuity as claimed by the defendants. I am also of the opinion that the contention of the learned counsel for the plaintiffs that the words "for the period or periods" as required must be read as if it is for a period of five years. He has submitted that it is so because clause 1 of the agreement also used the word on the same terms and conditions of the contract of 8.2.1967 as for a period of five years. He has submitted that by virtue of the words on the same terms and conditions all the terms and conditions of the agreement dated 8.2.1967 must be treated to have incorporated in a renewed contract and the same will not only include a clause for a period of five years next but also shall include a further right of renewal. If that contention is accepted obviously the contract has to be read in perpetuity because further renewal will include further right of renewal for next period of five years. I am not inclined to accept the said proposition of the learned counsel for the plaintiffs because in my opinion on accepting such

proposition it would lead to an absurd and unthinkable consequence of the said contract. It has been well settled that a contract must be considered in a normal business sense and not as contended by the learned counsel for the plaintiffs that the contract in perpetuity has been entered into for the supply of the material. Infact the plaintiffs have also filed a second suit for the next period of five years i.e. for a period of 1977 to 1982 by contending the very same argument of renewal and in my opinion thus the argument of the plaintiffs if accepted it would lead to a perpetual contract of supply of goods which has to be rejected as it is not possible to accept the same.

25. The contention of the learned counsel for the defendants that apart from Clause 1 of the contract it has been enforced by the plaintiff that there was an oral assurance that there will be a renewal for five years. Learned counsel for the defendants has rightly pointed out to me that

in the plaint there is no such pleading of oral assurance in the meeting dated 8.2.1967. There is also no such case put forward or pleaded and therefore no evidence can be laid inrespect of the said oral agreement. He has rightly relied upon the judgment of the apex court in the case of Ram Sarup Gupta (supra) in support of the aforesaid contention. Apart from the aforesaid learned counsel for the defendant has rightly relied upon the provisions of Section 92 of the Evidence Act which provides that there can be no oral evidence contrary to the written documents on record. Admittedly the document at Exhibit D being agreement dated 8.2.1967 is in writing and thus no oral evidence can be permitted to prove the oral agreement inconsistent with the said written agreement which is on record. In that light of the matter the contention of the learned counsel for the plaintiffs of such an oral agreement is required to be rejected.

26. Now turning to the next aspect of the matter which is on the assumption that there has

been a renewed contract in favour of the plaintiffs and then whether the plaintiffs are entitled to claim damages. I am of the opinion that for the same it will be required to see whether the plaintiffs are able to establish and prove the so called claim of damages. The claim of damages is based on two aspects that the subsequent supplies which have been effected by the defendants to the plaintiffs for a period of 1972 to 1977 without giving any benefits of rebate of Rs.5/- and secondly not granting of a credit period of 30 days. To establish the aforesaid the least which was required to be proved by the plaintiffs is the quantum of goods supplied to them by the defendants during the said period of 1972 to 1977. In so far as this aspect is concerned the evidence which has been produced by the plaintiffs is only the Statement of Account and the Balance Sheet to prove the supplies from the period 1972 to 1977. Learned counsel for the defendants has rightly contended that mere entries in the books of accounts would not establish the actual amount of supply effected by the defendants

to the plaintiffs during the period 1972 to 1977. It has been rightly contended that the plaintiffs ought to have produced the primary documents such as vouchers, invoices, delivery challans and or stock register/purchase register to establish the amount of goods which has been purchased from the defendants from time to time during the period 1972 to 1977. There is no evidence produced on record. Thus the quantity of supply is not established. Furthermore the quantity which is sought to be established by production of the books of account is in variance with the quantity claimed to have been purchased in the plaint. Thus in the evidence the plaintiff has for the first time arrived at a different quantity than what is mentioned in the plaint. It is therefore not possible to accept the case of the plaintiffs that the supplies effected by the defendants is in accordance with the production of documents such as the ledger and the Balance Sheet. Apart therefrom also there is no evidence produced by the plaintiffs that the current rate of interest prevailing in the market during the period 1972 to

1977 was 15% as prayed in the present proceedings and the amount of loss suffered on the basies of any particular rate of interest for not granting the credit period of 30 days. In the absence of any proof of current rate of interest prevailing during the said period it is not possible to accept the claim of the plaintiffs towards the interest for not granting the credit period. Thus in my opinion even otherwise the plaintiffs have failed to establish the claim of damages and the claim made of interest on interest cannot be granted.

27. Learned counsel for the defendants has in my opinion rightly contended that assuming if the plaintiffs contention is to be accepted that the Clause 1 of the contract provides for a renewal in favour of the plaintiff by mere giving a notice then in that event also the said clause is vague because the clause does not provide for a period for which the said contract should be renewed. There is a lot of substance and merit in the

aforesaid contention that clause 1 is vague and ambiguious and therefore should be treated as hit by Section 29 of the Contract Act In my opinion the words "period or periods" as may be required provided in Clause 1 cannot be ignored and/or deleted while interepreting the said clause and if these words are required to be read then it would lead to an ambiguous contract which would be vague and uncertain in so far as the period of renewal is concerned and in that light of the matter the said Clause 1 is hit by Section 29 of the Contract Act.

28. In so far as the next contention of the learned counsel for the defendants is concerned that the contract dated 8.2.1967 does not incorporate the said clause of rebate I am not inclined to accept the same because the contract has to be read alongwith the minutes of the meeting dated 4.2.1967 as well as the letter dated 3.10.1967 and therefore the contention raised by the learned counsel for the defendant has to be rejected. There was an agreement to give rebate

during the subsistence of the original agreement and infact the said rebate has been given to the plaintiffs by the defendants during the said period. The next contention advanced by the learned counsel for the defendants that they being a public sector enterprise they cannot give preference to any of the supplies. The said statement is required to be rejected. It is because the public sector enterprise in so far as the business is concerned are working on business principles and it is open for the public sector to enter into any agreement with any of its suppliers and there is no fetters in law inrespect of a contract to be entered inrespect of the goods sold and delivered. The next contention advanced by the learned counsel for the defendants that the signatory to the said contract did not have authority to enter into the said agreement either in next five years or in perpetuity. In so far as the aforesaid contention is concerned admittedly the defendant has not stepped into the witness box and therefore he has failed to discharge the burden to prove the aforesaid contention and thus

the same is required to be rejected.

29. Now turning to the issues which are framed and which I am required to answer my answer thereto are as under :

(a) In so far as Issue No.1 is concerned in the light of the discussions hereinabove I answer the same in the negative and against the plaintiffs.

(b) In so far as Issue no.2 is concerned I am of the view that in the light of my answer to the Issue no.1 this issue also has to be answered in negative and against the plaintiffs.

(c) In so far as Issue no.3 is concerned the same is already answered in negative in view of the concession of the plaintiffs counsel rescorded in para 7 & 8 hereinabove.

(d) In so far as Issue no. 4 is concerned I answer the same in negative and hold that the plaintiffs have failed to prove any such claim for damages.

(e) In so far as Issue no. 5 is concerned I hold that there was a contract of granting rebate of Rs.6/- by the defendants to the plaintiffs but the same was only for an initial period of the agreement i.e. upto 31.8.1972 and there was no renewal thereof for subsequent period.

(f) In so far Issue no.6 is concerned I hold that the said clause I of the agreement is hit by Section 29 of the Contract Act being uncertain and vague and thus void.

In so far as Issue no. 7 is concerned I am of the opinion that the plaintiffs are

entitled to no relief whatsoever and the suit is required to be dismissed with cost as per operative order.

30. Suit is accordingly dismissed. The plaintiffs to pay cost of the present suit quantified at Rs.25,000/- (Rupees Twenty Five Thousand Only).

30. On dismissal of the suit normally I would have stopped and would not have proceeded further, but in the present case there is a disturbing event that the evidence of one of the witness P.W. no.1 is false. He has used the document being Exhibit A in the evidence i.e. the draft agreement with a view to mislead this court. The agreement which has been produced as a draft agreement of the final agreement dated 8.2.1967 and purportedly used with a view to misguide this court to believe that the same was a draft document which was forwarded by the plaintiffs to the defendants before finalisation of the said

agreement dated 8.2.1967. However on perusal of the evidence particularly the oral evidence in paras 7 to 10 of P.W. no.1 and on close scrutiny of the draft agreement Exhibit A the fact that the agreement contains an adhesive stamp of 31.12.1976. I am of the opinion that this is a case where the plaintiffs witness P.W. no.1 has prima facie committed serious perjury.

31. Learned counsel for the plaintiffs has thereafter submitted that this court should take a lenient view in this matter in so far as the question of false evidence by virtue of false documents read with oral evidence of P.W.NO.1 is concerned. He has submitted that the said P.W. no.1 is of advanced age and in view of his advanced age this court should not take serious action of perjury and the matter should be rested at this stage only. He has further apologised on behalf of P.W.no.1 for the said oral evidence by contending that the said draft agreement is of 8.2.1967 inspite of the fact that the document is subsequent to 1972. He further submitted that the

said error has crept in inadvertently. I am however not impressed wi th the said explanation and therefore I issue Show Cause Notice to P.W. no.1 Shambulal Basantilal Agarwal for showing cause why prosecution of perjury should not be sanctioned against him under Section 192 to 195 of the Indian Penal Code.

****